

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MELVIN MILLER,

Plaintiff

v.

Civil Action No. 5:09CV39  
(STAMP)

JOHN DELLA RATTA LAW OFFICE

Defendant.

**MEMORANDUM OPINION AND ORDER**  
**AFFIRMING AND ADOPTING REPORT AND**  
**RECOMMENDATION OF MAGISTRATE JUDGE**  
**AND TRANSFERRING CASE TO THE**  
**UNITED STATES DISTRICT COURT FOR**  
**THE NORTHERN DISTRICT OF NEW YORK**

The plaintiff in the above-styled civil action filed a complaint in this Court pursuant to 42 U.S.C. § 1983 on April 14, 2009. The plaintiff, an inmate at the Federal Correctional Institution - Gilmer, in Glenville, West Virginia, alleges that the defendant,<sup>1</sup> which apparently represented the plaintiff in criminal proceedings in the State of New York, has violated the professional responsibilities it owed the plaintiff arising from that representation.

This case was referred to United States Magistrate Judge David J. Joel for an initial review and submission of proposed findings of fact and recommendation pursuant to Local Rule of Prisoner

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<sup>1</sup>The plaintiff's complaint names the John Della Ratta Law Office as the only defendant. However, the complaint asserts allegations against Mr. John Della Ratta as an individual.

Litigation Procedure 83.09. Magistrate Judge Joel issued a report and recommendation finding that the alleged events forming the basis for this lawsuit appear to have occurred in the jurisdiction of the United States District Court for the Northern District of New York and that, therefore, venue is not proper in this Court. Accordingly, Magistrate Judge Joel recommended that the case be transferred to the United States District Court for the Northern District of New York. The magistrate judge informed the parties that if they objected to any portion of the report, they must file written objections within ten days after being served with copies of the report. To date, no objections have been filed.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because no objections have been filed, this Court reviews the magistrate judge's report and recommendation for clear error.

Having reviewed the magistrate judge's report and recommendation for clear error and finding none, this Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation in its entirety. Accordingly, the case is hereby TRANSFERRED to

the United States District Court for the Northern District of New York.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this order to the petitioner and to the Clerk of the United States District Court for the Northern District of New York. The Clerk is further DIRECTED to TRANSFER this case to the United States District Court for the Northern District of New York and to DISMISS the case from the active docket of this Court.

DATED: May 26, 2009

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE